

ENTRY ORDER

JUL 21 2009

SUPREME COURT DOCKET NO. 2009-226

JULY TERM, 2009

State of Vermont

v.

Jabari V. Peterson

} APPEALED FROM:  
}  
}

} District Court of Vermont,  
} Unit No. 1, Chittenden Circuit  
}

} DOCKET NO. 1571-4-09 Cncr  
}

} Trial Judge: A. Gregory Rainville

In the above-entitled cause, the Clerk will enter:

Defendant Jabari V. Peterson appeals the district court's denial of his motion to reduce cash bail. On appeal, defendant asserts that the \$100,000 bail amount set by the district court was excessive and was not supported by the record. We reverse and remand.

Defendant faces three counts of violating 18 V.S.A. § 4231(b)(1) and one count of violating 13 V.S.A. § 1404(c)(5) in connection with the State's allegations that he sold cocaine to a police informant. At his May 26, 2009 arraignment, Judge Ben W. Joseph set bail at \$100,000, reasoning that "we recently set bail at ten thousand in one of these cases and the person has never been seen since posting the bail within two hours of his arrest."<sup>1</sup> Defendant moved pursuant to 13 V.S.A. § 7554(d)(1) to have his bail reviewed. Judge A. Gregory Rainville upheld the bail set by Judge Joseph. He summarily concluded that the weight of the evidence against defendant as well as the fact that defendant resides out of state supported bail in the amount of \$100,000.<sup>2</sup>

On this record, we cannot conclude—as we must to affirm the district court's bail determination—that its decision "is supported by the proceedings below." 13 V.S.A. § 7556(b). Here, there is no evidence in the record as to how the court arrived at \$100,000 as an appropriate amount of bail; that is, there is no explained relation between the amount of bail set by the court

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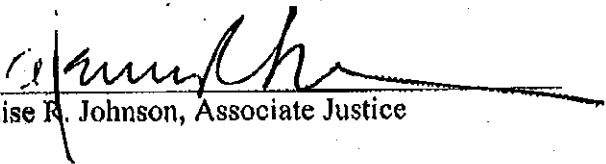
<sup>1</sup> Although Judge Joseph's ruling is not at issue here, we note that the district court must, if it deems a defendant bailable, set forth a bail amount particularized to that defendant; its result cannot be dictated simply by reference to amounts set in previous cases. See *State v. Toomey*, 126 Vt. 123, 126, 223 A.2d 473, 476 (1966).

<sup>2</sup> Specifically, in rejecting defendant's motion that his bail be reduced, Judge Rainville said, "[y]ou know, [he's] facing [several] felonies with minimal contacts in the State of Vermont and the weight of the evidence being quite strong based upon the affidavits, I'm going to have to deny [his request]."

and the risk of flight posed by defendant. While the fact that a defendant resides out of state may, as a general matter, support a higher bail amount, here, this general consideration must be weighed against the fact that defendant has, in the past, appeared in court when called and considered along with the other factors enumerated in 13 V.S.A. § 7554(b). The record simply does not reflect such an analysis. Therefore, we reverse and remand the case for reconsideration and a clearer statement of the basis for the amount of bail set.

Reversed and remanded for reconsideration consistent with the views expressed herein.

FOR THE COURT:

  
Denise R. Johnson, Associate Justice